RADIANT SPLENDOUR SDN BHD & ANOR
v. DR MOHAMMAD HANIS OSMAN

HIGH COURT MALAYA, KUALA LUMPUR
YUSRIN FAIDZ YUSOFF JC
[SUIT NO: WA-22M-1515-09-2023]
8 MAY 2025

Abstract – *(i) A claim will be struck out, on the grounds of multiplicity of proceedings, if it bears considerable resemblance, both in substance and relief sought, to a previously initiated suit; even if the wording of the reliefs is not identical, provided the essential nature and objective are substantially the same; (ii) A claim is barred by the doctrine of issue estoppel if the plaintiffs have previously commenced legal proceedings mounting the same challenge.*

CIVIL PROCEDURE: *Striking out – Writ and statement of claim – Application for – Default in financing facility – Parties entered into settlement agreements – Defaulting parties commenced action against chief executive officer of bank – Suit in relation to settlement agreements – Whether claim disclosed reasonable cause of action – Whether lacked substance and constituted abuse of process – Whether ought to be struck out – Rules of Court 2012, O. 18 r. 19(1)(a), (b) & (d)*

CIVIL PROCEDURE: *Proceedings – Multiplicity of proceedings – Default in financing facility – Parties entered into settlement agreements – Defaulting parties commenced action against chief executive officer of bank – Suit in relation to settlement agreements – Existence of similar suit – Whether there was multiplicity of proceedings*

Bank Kerjasama Rakyat Malaysia Bhd ('Bank Rakyat') had extended an *Istisna*' financing facility, amounting to RM198,888,759, to the first plaintiff and this was guaranteed by the second defendant and one 'Deepak'. Following defaults by the plaintiffs and Deepak, Bank Rakyat and the first plaintiff entered into settlement agreements. The plaintiffs then commenced the present action against the defendant, alleging that the defendant, in his capacity as the chief executive officer, had (i) directed Bank Rakyat to reject any further settlement proposals and/or to decline the grant of any additional extensions of time for payment of the monies owed under the third settlement agreement; and (ii) refused to accept a post-dated cheque issued by the first plaintiff, as payment towards the sums owing under the third settlement agreement. Such refusal, according to the plaintiffs, amounted to an inducement of a breach of the third settlement agreement. The defendant, in his application to strike out the plaintiffs' claim, argued that (i) he had been improperly drawn into the dispute and that the plaintiffs' claim lacked substance, disclosed no reasonable cause of action and constituted an abuse

of process; (ii) there were multiplicity of proceedings as the plaintiffs had already initiated a suit against Bank Rakyat, seeking identical relief ('Suit 633'); and (iii) the present suit was barred by the doctrine of issue estoppel as the plaintiffs, together with Deepak, had previously commenced legal proceedings, *ie*, Suits 225 and 793, where they similarly sought to impugn the validity and enforceability of various settlement agreements concluded with Bank Rakyat.

Held (allowing defendant's application; striking out plaintiffs' writ and statement of claim):

(1) The plaintiffs' statement of claim was deficient in material particulars. The pleadings were vague and failed to plead, with particularity, the defendant's alleged instructions to Bank Rakyat or how those instructions allegedly led to actionable harm. The failure to properly plead the causative link between the defendant's conduct and the reliefs sought, especially when the plaintiffs' prayers related primarily to settlement agreements to which the defendant was not a party, created a disconnect that rendered the pleading defective. The plaintiffs' pleading did not, on its face, disclose a reasonable cause of action against the defendant. (paras 29 & 30)

(2) The foundation of the plaintiffs' claims rested upon a series of agreements and settlement agreements where, upon a close examination of these documents, revealed that the defendant was not a party or signatory to any of them. The documents involved the plaintiffs, Deepak and Bank Rakyat and not the defendant. (para 36)

(3) The plaintiffs' statement of claim in the present action bore considerable resemblance, both in substance and in relief sought, to the pleadings filed in Suit 633. Both suits (i) contained allegations that questioned the conduct of the defendant *vis-à-vis* the principles of Shariah compliance; and (ii) sought a reference to the Shariah Advisory Council, pursuant to s. 56 of the Central Bank of Malaysia Act 2009. Although the wording of the reliefs in the two suits was not identical, the essential nature and objective of the reliefs were substantially similar. (para 49)

(4) The plaintiffs' principal contention in Suits 225 and 793 was that, the very same settlement agreements now once again under challenge, were invalid, unenforceable and inconsistent with the legal rights. Therefore, the doctrine of issue estoppel squarely applied to bar the present claim. (paras 54 & 55)

Case(s) referred to:

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Atalian Holdings (Malaysia) Sdn Bhd v. Radzali Hassan [2021] CLJU 420; [2021] 1 LNS 420 HC ***(refd)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Bank Kerjasama Rakyat Malaysia Bhd v. Abdul Aziz Zainal & Ors [2023] 10 CLJ 44 HC ***(refd)***
Boey Oi Leng v. Trans Resources Corporation Sdn Bhd [2002] 1 CLJ 405 HC ***(refd)***
Chung Khiaw Bank Ltd v. Tio Chee Hing [1987] 1 CLJ 531; [1987] CLJ (Rep) 81 SC ***(refd)***
Gabriel Peter & Partners (Suing As A Firm) v. Wee Chong Jin & Ors [1998] 1 SLR 374 ***(refd)***
Harapan Permai Sdn Bhd v. Sabah Forest Industries Sdn Bhd [2011] 1 CLJ 285 CA ***(refd)***
Ho Num Chon & Anor v. Tech-Lab Manufacturing Sdn Bhd [2017] 5 CLJ 187 HC ***(refd)***
Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA ***(refd)***
Middy Industries Sdn Bhd & Ors v. Arensi-Marley (M) Sdn Bhd [2012] CLJU 830; [2012] 1 LNS 830 CA ***(refd)***
Nazaruddin Mohd Shariff & Anor v. Roslan Maulud & Anor [2020] CLJU 1235; [2020] 1 LNS 1235 HC ***(refd)***
Pengiran Othman Shah Pengiran Mohd Yusoff & Anor v. Karambunai Resorts Sdn Bhd Sdn Bhd & Ors [1996] 1 CLJ 257 CA ***(refd)***
Radiant Splendour Sdn Bhd & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors [2020] CLJU 812; [2020] 1 LNS 812 HC ***(refd)***
Re Vernazza [1959] 2 All ER 200 ***(refd)***
Salomon v. Salomon & Co Ltd [1897] AC 22 ***(refd)***
Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors [2012] 1 CLJ 75 CA ***(refd)***
Tan Wei Hong & Ors v. Malaysia Airlines Bhd And Other Appeals [2018] 9 CLJ 425 FC ***(refd)***
Yeng Hing Enterprise Sdn Bhd v Liow Su Fah [1979] CLJU 130; [1979] 1 LNS 130 FC ***(refd)***

Legislation referred to:
Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978, ss. 4, 5(1), 6, 14, 16
Central Bank of Malaysia Act 2009, s. 56
Co-operative Societies Act 1993, s. 51(3)
Development Financial Institutions Act 2002, s. 5A
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (d), O. 21 r. 3

For the plaintiffs - Bhavanash Sharma, Chetna Brijmohan & Amanda Lim; M/s Bhavanash Sharma
For the defendant - Natalia Izra Nasaruddin & Tengku Nazmi Tengku Anuar; M/s Azmi & Assocs

Reported by Najib Tamby

JUDGMENT

Yusrin Faidz Yusoff JC:

Introduction

[1] The principle is clear: much like a courtroom drama where every character, be they a seasoned counsel or a fledgling advocate, gets their moment to present their case, our legal system ensures that justice is not reserved for the strongest, but accessible to all. Yet, just as a trial cannot be

endlessly retried simply because one side dislikes the verdict, the integrity of the process demands closure. Constantly rewriting the script after the final act undermines the certainty that justice requires. It is within this framework that the defendant's striking out application must be considered.

Background Facts

[2] Enclosure 9 involves the defendant, Dr Mohammad Hanis bin Osman, seeking to strike out the plaintiffs' claim under O. 18 r. 19(1)(a), (b), and (d) of the Rules of Court 2012 ("the Rules"). The defendant contends he has been improperly drawn into this dispute, arguing that the plaintiff's claim lacks substance, discloses no reasonable cause of action, and constitutes an abuse of process.

[3] Based on the plaintiffs' statement of claim ("SOC"), the origin of the present dispute can be traced to a financing arrangement entered into on 24 July 2008, when Bank Kerjasama Rakyat Malaysia Berhad ("Bank Rakyat"), a co-operative bank, extended an *Istisna*' Financing Facility amounting to RM198,888,750 to the first plaintiff, Radiant Splendour Sdn Bhd. The facility was intended to finance the purchase of 80 condominium units in a development known as Palazzio Tower B Condominium, situated on the master title held under Grant 14765, Lot No. 48629, Mukim and District of Kuala Lumpur. This transaction was formalised by way of an *Istisna*' facility agreement, sale and purchase agreements, a deed of assignment, and guarantee agreements executed by the second plaintiff, Rajesh a/l Jaikishan, and Deepak Jaikishan a/l Jaikishan Rewachand ("Deepak Jaikishan").

[4] Following defaults by the plaintiffs and Deepak Jaikishan, Bank Rakyat and the first plaintiff entered the following agreements:

(i) first settlement agreement on 19 April 2013, with a power of attorney given to Bank Rakyat to sell the condominium units; and

(ii) second settlement agreement on 30 June 2016, following a judgment in default obtained by Bank Rakyat in Suit No: WA-22M-48-03-2016 ("Suit 48").

[5] *Vide* Suit No: WA-22M-225-06-2018 ("Suit 225"), the plaintiffs and Deepak Jaikishan sued Bank Rakyat to have the second settlement agreement rescinded due to fraudulent concealment of sale details and misrepresentation, as well as to set aside the default judgment obtained in Suit 48. Their ultimate aim of Suit 225 was to invalidate the aforementioned *Istisna*' financing facility granted by Bank Rakyat. On 14 November 2018, Suit 225 was withdrawn with liberty to file afresh.

[6] *Vide* Suit No. WA-22NCVC-793-11-2018 ("Suit 793"), filed shortly after the withdrawal of Suit 255, the plaintiffs and Deepak Jaikishan sued five individual defendants, including former Malaysian Prime Minister

Najib Razak, and the CEO of Bank Rakyat, Tan Sri Shukry Mohd Salleh, alleging fraud, conspiracy, and abuse of process. Again, Suit 793 was filed with the main aim to invalidate the same *Istisna*' financing facility granted by Bank Rakyat. The plaintiffs in Suit 793 had repeatedly admitted the debt in prior lawsuits and the first and second settlement (2012–2017) but later claimed the debt was fabricated to coerce Deepak Jaikishan's favourable testimony in the Altantuya Shaariibuu murder trial. The defendants applied to strike out Suit 793, arguing issue estoppel and abuse of process. In her grounds of judgment dated 13 January 2020, Azimah Omar J (as Her Ladyship then was) held the plaintiffs' allegations contradicted their prior admissions and conduct, lacked credible evidence, and failed to include Bank Rakyat. Applying principles of finality in litigation and estoppel, Her Ladyship struck out Suit 793 as she found it to be unsustainable, frivolous, and vexatious. (See: *Radiant Splendour Sdn Bhd & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2020] CLJU 812; [2020] 1 LNS 812; [2020] MLJU 961).

[7] Pursuant to the third settlement agreement executed on 7 May 2021, the first plaintiff undertook to remit a sum of RM12.2 million in full and final settlement by 31 December 2021. Bank Rakyat refused to accede to any further extensions or modifications to the agreed payment terms, which the first plaintiff nevertheless sought, thereby evincing an intention not to be bound by the terms of the settlement and amounting to a repudiation of the third settlement agreement.

[8] On 22 May 2023, *vide* Suit No. WA-22M-633-05-2023 ("Suit 633"), the plaintiffs and Deepak Jaikishan sued Bank Rakyat for breaching the terms of the first settlement agreement. In the said legal action, the plaintiffs alleged that Bank Rakyat permitted the lapse of the power of attorney, auctioned condominium units below the agreed price, and concealed sale details, thereby causing financial losses. It is further alleged that despite the second settlement agreement reducing the debt to RM22 million and the third settlement agreement reducing it to RM12.2 million, Bank Rakyat refused payment *via* cheque and pursued new law suits and execution proceedings in 2023 for damages in the region of RM70 million. The plaintiffs accused the bank of bad faith, concealment, and manipulating legal processes to enforce oppressive clauses. They seek reference to the Shariah Advisory Council of Bank Negara Malaysia, declarations invalidating agreements, voiding abusive terms, and compelling the bank to account for sales, repay shortfalls, and compensate for damages.

[9] On 1 August 2023, the plaintiffs commenced the present action against the defendant, seeking reliefs arising from the same *Istisna*' financing facility and the subsequent settlement agreements entered into with Bank Rakyat. In this current suit, the plaintiffs allege that the defendant, in his capacity as

CEO, directed Bank Rakyat to act contrary to the terms of the third settlement agreement in that the defendant had instructed Bank Rakyat to reject any further settlement proposals and/or to decline the grant of any additional extensions of time for payment of the monies owed under the third settlement agreement. It is further alleged that the defendant refused to accept a post-dated cheque in the sum of RM10,130,000, issued by the first plaintiff in December 2022, as payment towards the sums owing under the third settlement agreement. The plaintiffs contend that such refusal amounted to an inducement of a breach of the third settlement agreement.

[10] The defendant filed striking out application in encl. 9 on 13 October 2023. The hearing initially scheduled for 27 April 2024 was postponed due to the medical condition of the plaintiffs' then counsel. The subsequent hearing on 7 May 2024 was adjourned following a last-minute notification, received scarcely an hour before the hearing, that the plaintiffs intended to withdraw their entire claim against defendant to facilitate further settlement talks. The matter was next called up on 27 May 2024. As the parties were unable to reach consensus on the issues of costs and whether the plaintiffs ought to be permitted to refile the claim, I directed that a formal withdrawal application under O. 21 r. 3 of the Rules of Court 2012 be filed. This direction eventually culminated in the filing of encl. 29 on 14 June 2024.

[11] On 22 August 2024, the plaintiffs' solicitors filed encl. 35, seeking to withdraw themselves from acting. This move, given the course of proceedings, was perhaps not entirely unexpected. Subsequently, on 26 August 2024, the defendant's new solicitors withdrew encl. 29, and the hearing of encl. 9 was fixed for 9 October 2024. However, due to the plaintiffs' delay in filing their written submissions, the hearing was deferred to 24 October 2024.

[12] At the hearing on 24 October 2024, upon hearing the arguments, I fixed the decision date on encl. 9 for 2 December 2024, to afford the plaintiffs an opportunity to file a further affidavit on the alleged non-compliance with a ministerial directive and the defendant's purported role in undermining the settlement process. The decision date was thereafter adjourned to 24 January 2025 to allow the plaintiffs to file an additional affidavit asserting that the defendant had been directed to resign within 24 hours on 8 November 2024. This event is argued to bear relevance to the alleged "second derailment" of the settlement. When the plaintiffs' affidavit was again filed belatedly, I was constrained to defer the decision to 3 March 2025 to allow the defendant to file a reply as well as supplementary submissions. The court notes, not without some concern, the recurring pattern of delay attributable to the plaintiffs' side, despite multiple accommodations afforded throughout these proceedings.

[13] On 3 March 2025, having heard and considered the application alongside the affidavits filed post-submission, I allowed the defendant's application to strike out the plaintiffs' writ and statement of claim. The plaintiffs were ordered to pay costs in the sum of RM10,000 to the defendant. The plaintiffs have since filed a notice of appeal against my decision. I now proceed to deliver the grounds of my judgment.

Issues

[14] The application in encl. 9 addresses the following issues:

(i) whether the plaintiffs' claim discloses a reasonable cause of action;

(ii) whether the claim is frivolous, vexatious, or an abuse of process; and

(iii) whether multiplicity of proceedings and issue estoppel applies to bar the plaintiffs' claim.

Counsels' Contentions

Plaintiffs' Contentions

[15] Learned counsel for the plaintiff, Bhavanash Sharma, contends that sufficient material facts have been pleaded to justify legal action against the defendant. Counsel argue that the defendant's actions as Bank Rakyat's CEO were manipulative, breached Shariah principles, and caused unjust financial harm. The essence of the plaintiff's claim is to seek judicial intervention to enforce transparency, uphold Islamic finance principles, and compensate for losses stemming from Bank Rakyat's alleged misconduct. The defendant is argued to be the "directing mind" of Bank Rakyat post-2022.

[16] Learned counsel for the plaintiff further submit that the evidence adduced in encl. 52 (at pp. 26-27) demonstrates that the letters issued by the first plaintiff on 23 September 2022 and 6 October 2022 bore the endorsement of Tan Sri Noh Omar, then Minister of Entrepreneur and Cooperatives Development. This, according to the plaintiffs, constitutes a "ministerial direction" within the meaning of s. 16 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ("Bank Rakyat Act"), thereby obligating Bank Rakyat to accept the first plaintiff's proposed terms of settlement. The plaintiffs contend that the defendant played a pivotal role in thwarting the third settlement agreement by inducing or otherwise causing Bank Rakyat to disregard what they assert to be a binding ministerial directive.

Defendant's Contentions

[17] Learned counsel for the defendant, Natalia Izra Nasaruddin, argues that the plaintiffs' claim hinges on Bank Rakyat's conduct between 2008-2021, predating the defendant's appointment as Bank Rakyat's CEO. Invoking the principle established in *Salomon v. Salomon & Co Ltd* [1897] AC

22, counsel for the defendant argues that Bank Rakyat's corporate veil cannot be pierced in absence of fraud or unconscionability, and thus, attributing Bank Rakyat's actions to the defendant is legally unsustainable.

[18] Learned counsel for the defendant also contends that the plaintiffs' pleadings are defective, as the SOC fails to provide material particulars to substantiate allegations of conspiracy, inducement, or misrepresentation. Crucially, no evidence connects the defendant to Bank Rakyat's decisions prior to 2022.

[19] Regarding multiplicity of proceedings, learned counsel for the defendant highlights that the plaintiffs have already initiated Suit 633 against Bank Rakyat, seeking identical relief. Pursuing parallel lawsuits against both Bank Rakyat and the defendant for the same grievances is argued to constitute an abuse of process. Reliance is made on the case of *Nazaruddin Mohd Shariff & Anor v. Roslan Maulud & Anor* [2020] CLJU 1235; [2020] 1 LNS 1235; [2020] MLJU 1362.

[20] Learned counsel for defendant further raises issue estoppel, noting that the plaintiffs' challenge to the settlements was conclusively dismissed in Suit 793. Re-litigating this matter, counsel argues, violates the doctrine of finality in litigation, as affirmed in *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189.

[21] On the question of the applicability of s. 16 of the Bank Rakyat Act, learned counsel for the defendant contends that the provision pertains exclusively to the Board of Directors, of which the defendant was not a member. The defendant further relies on the case of *Bank Kerjasama Rakyat Malaysia Bhd v. Abdul Aziz Zainal & Ors* [2023] 10 CLJ 44 (per Mohd Arief Emran Arifin J) to argue that based on s. 5A of the Development Financial Institutions Act 2002 ("DFIA"), the Board of Director of Bank Rakyat has a duty to act in the best interest of the bank and "it is not to ensure that any personal requests or demands of any third party, even if the said person is the Prime Minister or the Minister of Finance, are adhered to."

Court's Findings

[22] The provisions on striking out of pleadings are provided in O. 18 r. 19(1) of the Rules which is reproduced below:

> 19. Striking out pleadings and endorsements (O. 18 r. 19)
>
> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that -
>
> a) it **discloses no reasonable cause of action** or defence, as the case may be;
>
> b) it is **scandalous, frivolous or vexatious;**

c) it may prejudice, embarrass or delay the fair trial of the action; or

d) it is otherwise **an abuse of the process of the Court** and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be. (emphasis added)

[23] In the case of *Pengiran Othman Shah Pengiran Mohd Yusoff & Anor v. Karambunai Resorts Sdn Bhd & Ors* [1996] 1 CLJ 257; [1996] 1 MLJ 309 (CA) the Court of Appeal held as follows:

> The discretionary power to dismiss an action summarily under O. 18 r. 19 of the RHC and under the inherent jurisdiction of the court is **a drastic power which should only be exercised in plain and obvious cases.** When a case is argued on the affidavit evidence available, it must become plain and obvious that the case has no chance of success. (emphasis added)

[24] Ramly Ali FCJ in *Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals* [2018] 9 CLJ 425 laid out the test for the striking out of pleadings; wherein His Lordship referred to the case of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36 and held as follows:

> The tests for striking out application under O. 18 r. 19 of the ROC, as adopted by the Supreme Court in Bandar Builders are, *inter alia*, as follows:
>
> (a) **it is only in plain and obvious cases that recourse should be had to the summary process under the rule;**
>
> (b) this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it **obviously unsustainable;**
>
> (c) it **cannot be exercised by a minute examination of the documents and facts** of the case in order to see whether the party has a cause of action or a defence;
>
> (d) if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O. 33 r. 3 of the ROC; and
>
> (e) the court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable. (emphasis added)

[25] The Court of Appeal, in *Sivarasa Rasiah & Ors v. Che Hamzah Che Ismail & Ors* [2012] 1 CLJ 75; [2012] 1 MLJ 473 adopted the well-settled principle of striking out in the following passage:

> A striking out order should not be made summarily by the court if there is issue of law that requires lengthy argument and mature consideration. It should also not be made if there is issue of fact that is capable of resolution only after taking *viva voce* evidence during trial (see: *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305; [1997] 2 MLJ 565 (Federal Court)).

[26] Arising from the foregoing, the court shall now proceed to consider the pertinent issues advanced in the defendant's application to strike out the pleading.

Whether The Plaintiffs' Claim Discloses A Reasonable Cause Of Action

[27] The test for striking out a pleading for disclosing no reasonable cause of action is well established. As stated in *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7, a claim may be struck out where it is "obviously unsustainable". In *Atalian Holdings (Malaysia) Sdn Bhd v. Radzali Hassan* [2021] CLJU 420; [2021] 1 LNS 420; [2021] MLJU 533, Liza Chan Sow Keng JC (as Her Ladyship then was) struck out a counterclaim on the basis that there was no legal nexus between the facts pleaded and the relief sought.

[28] I find merit in the defendant's contention that the plaintiffs' SOC is deficient in material particulars. Learned counsel for the defendant rightly point out that the pleadings are vague and fail to plead with particularity the defendant's alleged instructions to Bank Rakyat or how those instructions allegedly led to actionable harm.

[29] The failure to properly plead the causative link between the defendant's conduct and the reliefs sought, particularly when the plaintiffs' prayers relate primarily to settlement agreements to which the defendant is not a party, creates a disconnect that renders the pleading defective.

[30] A pleading must set out not only the facts but also the connection between those facts and the legal claim made. In the present case, there is insufficient articulation of how the alleged acts of the defendant amount to a breach or tortious act, and how that in turn justifies the reliefs claimed. As such, the court agrees that the pleading does not, on its face, disclose a reasonable cause of action against the defendant. The proposal of the learned counsel of the plaintiffs to have their SOC amended during their final submission does not remedy the fundamental deficiencies in the pleading, nor does it justify a belated revision at this advanced stage of proceedings.

Whether The Claim Is Frivolous, Vexatious, Or An Abuse Of Process

[31] The Court of Appeal in *Middy Industries Sdn Bhd & Ors v. Arensi-Marley (M) Sdn Bhd* [2012] CLJU 830; [2012] 1 LNS 830; [2013] 3 MLJ 511 describes this limb of O. 18 r. 19 as follows:

> [7] *Sub-paragraph (1)(b) of r 19, deals with pleading which is 'scandalous, frivolous or vexatious';* while sub-para (1)(d) of the same rule deals with 'an abuse of the process of the court'. In *Murray v. Epsom Local Board* [1897] 1 Ch 35 it was held by the court that, *'scandalous' generally refers to matters which improperly cause derogatory light on someone, usually a party to an action, with respect to moral character or uses repulsive language* (see also *Boey Oi Leng (t/a Indah Reka Construction Trading) v. Trans Resources Corporation Sdn Bhd*

> [2001] MLJU 566; [2001] 4 AMR 4807 and *Indah Desa Saujana Corp Sdn Bhd & Ors v. James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11). *The words 'frivolous or vexatious' generally refer to a groundless action or statement with no prospect of success, often raised to embarrass or annoy the other party to the action. In considering whether any proceedings were vexatious or frivolous, one is entitled to and ought to look at the whole history of the matter and it is not to be determined by whether the pleading discloses a cause of action or not* (see *Attorney General of Duchy of Lancaster v. London & North Western Railway Co* [1892] 3 Ch 274; and *Re Vernazza* [1959] 2 All ER 200). It was decided in the above cases that 'frivolous or vexatious actions mean cases which are obviously frivolous or vexatious or obviously unsustainable.
>
> (emphasis added)

[32] In *Chung Khiaw Bank Ltd v. Tio Chee Hing* [1987] 1 CLJ 531; [1987] CLJ (Rep) 81; [1987] 2 MLJ 701 the Supreme Court referred to the English case of *Re Vernazza* [1959] 2 All ER 200 which held the following:

> ..in determining whether proceedings were vexatious the **court must look at the whole history of the matter,** not solely at the question whether the pleadings had disclosed a cause of action. (emphasis added)

[33] In *Harapan Permai Sdn Bhd v. Sabah Forest Industries Sdn Bhd* [2011] 1 CLJ 285; [2011] 2 MLJ 192, Low Hop Bing JCA at para. [18], opines that an abuse of process of the court includes where such process has not been used in a *bona fide* manner.

[34] In *Gabriel Peter & Partners (suing as a Firm) v. Wee Chong Jin & Ors* [1998] 1 SLR 374 (CA) at p. 384, the Singapore Court of Appeal per Yong Pung How CJ at para. 22 held as follows:

> The term 'abuse of the process of the court', in O. 18 r. 19(1)(d) has been given a wide interpretation by the courts. It includes considerations of public policy and the interest of justice. This term signifies that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all relevant circumstances of the case.

[35] In *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd* [1999] 4 CLJ 533; [1999] 4 MLJ 637, Gopal Sri Ram JCA (later FCJ) (at pp. 645I-646A) held as follows:

> Since the circumstances in which the court's process may be abused are varied and numerous, the categories of such cases are therefore not closed. Whether the institution of an action or its continuation or a step taken therein amounts to an abuse of process depends upon particular and individual circumstances.

[36] The foundation of the plaintiffs' claims rests upon a series of agreements and settlement arrangements wherein a close examination of these documents, none of which have been disputed in terms of authenticity, reveals that the defendant was not a party or signatory to any of them. These documents involve the plaintiffs, Deepak Jaikishan, and Bank Rakyat, and not the defendant.

[37] The legal principle is clear. In *Boey Oi Leng v. Trans Resources Corporation Sdn Bhd* [2002] 1 CLJ 405, Low Hop Bing J (as His Lordship then was) held that a proceeding is frivolous and vexatious where the wrong party is sued. Similarly, in *Yeng Hing Enterprise Sdn Bhd v Liow Su Fah* [1979] CLJU 130; [1979] 1 LNS 130; [1979] 2 MLJ 240, the Federal Court struck out a claim on the basis that the defendant, being a separate juristic entity and not a party to the matters in question, had no reasonable cause of action against it.

[38] I also find that the defendant's appointment as CEO postdates the material events. From the affidavits filed, it is an undisputed fact that the defendant was only appointed acting CEO of Bank Rakyat on 1 April 2022 and as CEO on 1 July 2022. Based on the SOC, the material events complained of by the plaintiffs occurred well before these dates.

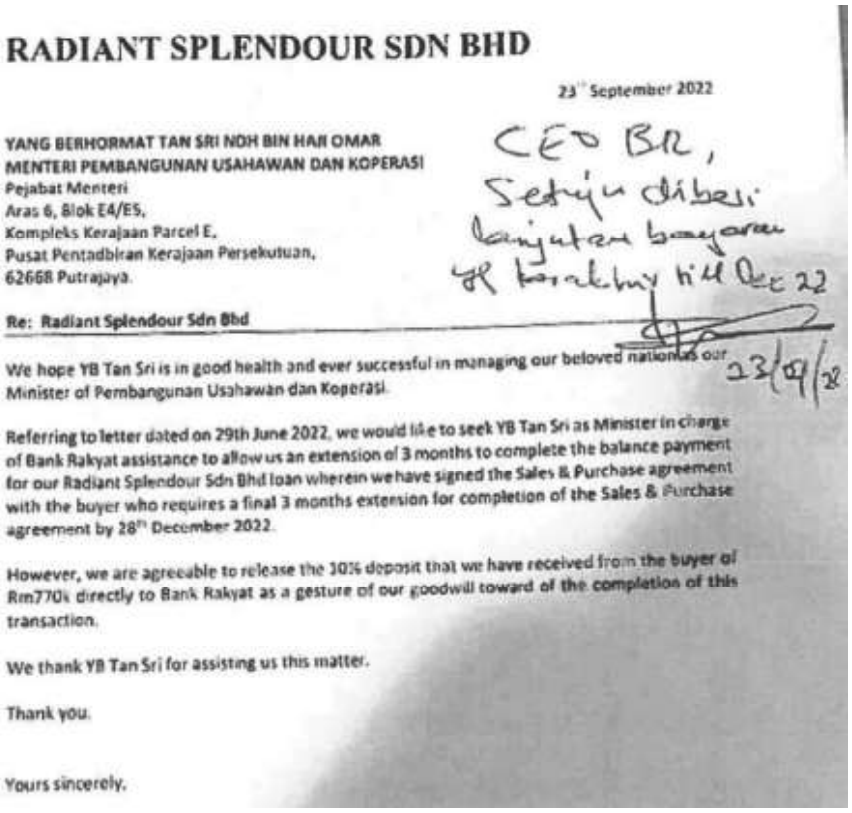
[39] Even if the defendant held the position of CEO during the material time (which he did not), the plaintiffs' claim remains flawed in law. It is trite that a company is a distinct legal entity, as held in *Salomon v. Salomon & Co Ltd* (*supra*). The defendant, as CEO, is not personally liable for acts carried out by the company unless it is shown that he acted outside the bounds of his authority, in fraud, or in abuse of corporate form, none of which has been pleaded in this case.

[40] In a further attempt to fortify their claim against the defendant, the plaintiffs introduced an additional allegation *via* affidavit in encl. 52 filed on 25 January 2025, asserting that the defendant had acted in defiance of a ministerial direction under s. 16 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 ("Bank Rakyat Act"). Section 16 provides as follows:

> **Directions by Minister**
>
> 16. The Minister may, from time to time, *issue directions to the Board* or to the managing body of any of the subsidiaries of the Bank *with respect to the running of the affairs of the Bank or the subsidiary, including such directions as he considers necessary or expedient for the protection of the interests of the members or depositors of the Bank or subsidiary,* and directions for the furnishing to him of such information concerning the affairs of the Bank or subsidiary as he may specify; and *the Board or managing body, as the case may be, shall comply with such directions.* (emphasis added)

[41] At the outset, it is pertinent to note that no specific ministerial direction was pleaded within the SOC. Rather, the plaintiffs merely alleged that the defendant refused to grant an extension of time despite the purported "sokongan menteri" (ministerial support), as referenced in paras. 22.2, 22.6, 22.7, and 29.11 of the SOC.

[42] Even assuming, *arguendo*, that the defendant had influenced Bank Rakyat's board of directors to disregard the so-called "sokongan menteri", I am of the considered view that the plaintiffs' reliance on s. 16 of the Bank Rakyat Act is fundamentally misconceived. For completeness, I reproduce in Figures 1 and 2 below the handwritten annotations made by the outgoing Minister. By way of context, the notes were penned a few days before the dissolution of Parliament in anticipation of the 15th General Election, which was scheduled for 19 November 2022.



RADIANT SPLENDOUR SDN BHD

23rd September 2022

YANG BERHORMAT TAN SRI NOH BIN HAJI OMAR
MENTERI PEMBANGUNAN USAHAWAN DAN KOPERASI
Pejabat Menteri
Aras 6, Blok E4/E5,
Kompleks Kerajaan Parcel E,
Pusat Pentadbiran Kerajaan Persekutuan,
62668 Putrajaya.

CEO BR,
Setuju diberi
lanjutan bayaran
yg terakhir till Dec 22
23/9/22

Re: Radiant Splendour Sdn Bhd

We hope YB Tan Sri is in good health and ever successful in managing our beloved nations our Minister of Pembangunan Usahawan dan Koperasi.

Referring to letter dated on 29th June 2022, we would like to seek YB Tan Sri as Minister in charge of Bank Rakyat assistance to allow us an extension of 3 months to complete the balance payment for our Radiant Splendour Sdn Bhd loan wherein we have signed the Sales & Purchase agreement with the buyer who requires a final 3 months extension for completion of the Sales & Purchase agreement by 28th December 2022.

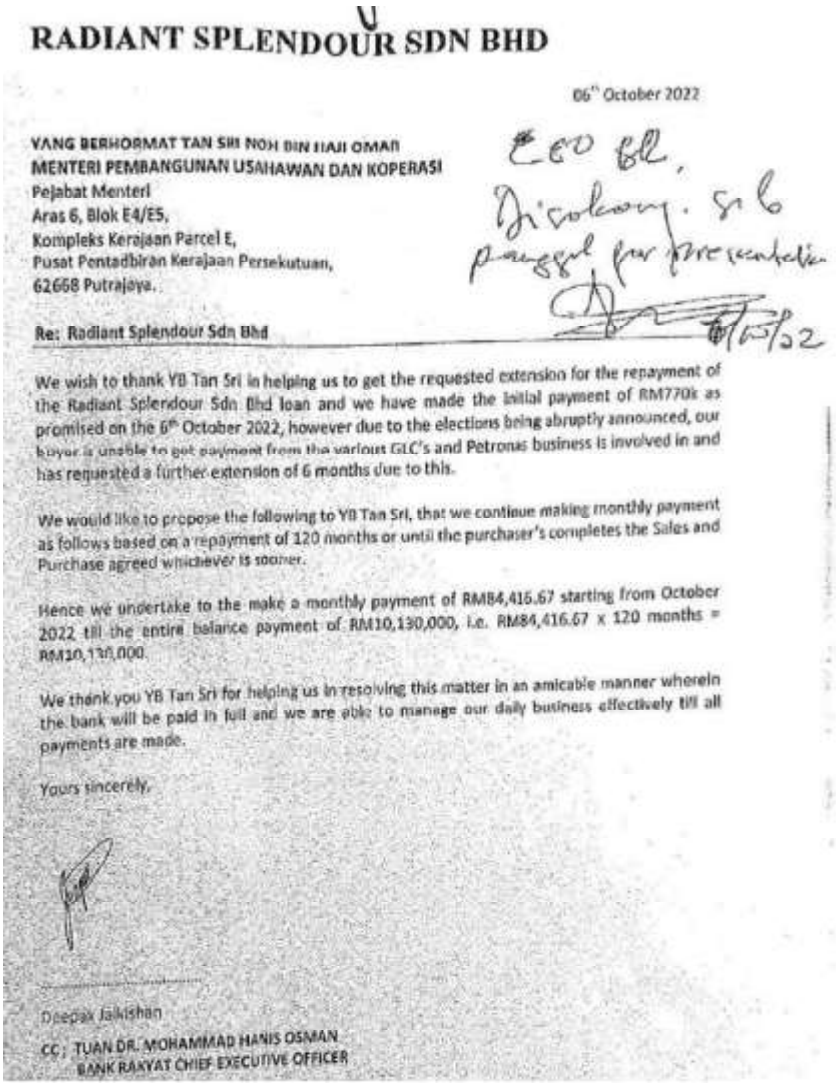
However, we are agreeable to release the 10% deposit that we have received from the buyer of Rm770k directly to Bank Rakyat as a gesture of our goodwill toward of the completion of this transaction.

We thank YB Tan Sri for assisting us this matter.

Thank you.

Yours sincerely,

Fig. 1: Letter from the first plaintiff to YB Tan Sri Noh Omar dated 23 September 2022 containing the Minister's handwritten note stating "CEO BR, setuju diberi lanjutan bayaran yg terakhir till Dec 2022.



RADIANT SPLENDOUR SDN BHD

06th October 2022

YANG BERHORMAT TAN SRI NOH BIN HAJI OMAR
MENTERI PEMBANGUNAN USAHAWAN DAN KOPERASI
Pejabat Menteri
Aras 6, Blok E4/E5,
Kompleks Kerajaan Parcel E,
Pusat Pentadbiran Kerajaan Persekutuan,
62668 Putrajaya.

CEO BR.
Disokong. Sila
panggil for presentation
6/10/22

Re: Radiant Splendour Sdn Bhd

We wish to thank YB Tan Sri in helping us to get the requested extension for the repayment of the Radiant Splendour Sdn Bhd loan and we have made the initial payment of RM770k as promised on the 6th October 2022, however due to the elections being abruptly announced, our buyer is unable to get payment from the various GLC's and Petronas business is involved in and has requested a further extension of 6 months due to this.

We would like to propose the following to YB Tan Sri, that we continue making monthly payment as follows based on a repayment of 120 months or until the purchaser's completes the Sales and Purchase agreed whichever is sooner.

Hence we undertake to the make a monthly payment of RM84,416.67 starting from October 2022 till the entire balance payment of RM10,130,000, i.e. RM84,416.67 x 120 months = RM10,130,000.

We thank you YB Tan Sri for helping us in resolving this matter in an amicable manner wherein the bank will be paid in full and we are able to manage our daily business effectively till all payments are made.

Yours sincerely,

Deepak Jaikishan

CC: TUAN DR. MOHAMMAD HANIS OSMAN
BANK RAKYAT CHIEF EXECUTIVE OFFICER

Fig. 2: Letter from first plaintiff to YB Tan Sri Noh Omar dated 6 October 2022 containing the Minister's handwritten note stating "CEO BR. Disokong. Sila panggil for presentation"

[43] I am of the considered view that the Minister's handwritten notes on the first plaintiff's correspondence do not amount to a formal directive within the meaning of s. 16 of the Act. That provision, found in Part IV, governing supervision and control, concerns itself with regulatory oversight and conflict-of-interest safeguards, particularly in respect of loans to directors, officers, and related parties. While ministerial intervention is contemplated

under the Bank Rakyat Act, it is of a specific regulatory character. Such oversight mirrors the protection extended to ordinary cooperative societies under s. 51(3) of the Co-operative Societies Act 1993.

[44] Co-operative banks and societies warrant heightened regulatory protection from the Ministry of Entrepreneurship and Co-operative Development due to their distinctive governance structure, social orientation, and inherent vulnerabilities when compared to conventional financial institutions. Unlike profit-driven entities, cooperatives are established to serve the welfare of their members, which makes them susceptible to manipulation by unscrupulous parties or adverse market dynamics. Co-operative banks, in particular, rely substantially on deposits from members; any erosion of trust may trigger destabilising bank runs. More broadly, co-operative societies play an essential role in grassroots economic empowerment. Ensuring their stability and integrity thus serves a broader public interest, especially for economically vulnerable communities.

[45] If we are to focus to the note in question, it lacks the requisite formal attributes or legal force. It may, at its highest, be characterised consistent with the plaintiffs' own pleading, as a ministerial support or "sokongan menteri" rather than a binding directive. The phrase "sila panggil for presentation" in Fig. 2 plainly indicates a request or suggestion, not a command to accept the terms proposed by the first plaintiff. It warrants emphasis that the Bank Rakyat Act vests statutory autonomy in the Board of Directors. Sections 4, 5(1), 6, and 14 of the Bank Rakyat Act as well as ss. 5 and 5A of the DFIA unequivocally assign responsibility for the bank's operational and commercial decisions to the Board, not the Minister. At this juncture, it bears emphasis that the defendant, while serving as the CEO, was at all material times not a member of the Board of Directors of Bank Rakyat.

[46] In essence, the Minister's powers under s. 16 of the Bank Rakyat Act are narrowly circumscribed to matters involving related-party transactions, primarily to safeguard the interests of Bank Rakyat's members and depositors, including those of its subsidiaries. The dispute before this court, however, pertains to an ordinary commercial borrower and thus clearly falls outside the statutory ambit of that provision.

[47] To contend, in this context, that a bank may be compelled to act upon an informal, handwritten ministerial note is to disregard the structural independence and fiduciary obligations of financial institutions. If such notes were to carry binding effect, one must ask: are we then to permit every borrower to brandish a hastily scrawled "sokongan menteri" as a shield against contractual liability? Such a proposition finds no support in the statute and, if accepted, would dangerously erode the principles of good governance and the integrity of autonomous banking operations.

Whether Multiplicity Of Proceedings Or Issue Estoppel Applies To Bar The Plaintiffs' Claim

[48] On this issue, learned counsel for the defendant submits that the plaintiffs' commencement of the present proceedings constitutes a clear case of multiplicity of actions and an abuse of the court's process. This contention is premised on the assertion that the present suit substantially overlaps with the claims, factual matrix, and reliefs sought in Suit 633, which had been earlier filed by the plaintiffs jointly with Deepak Jaikishan.

[49] Upon careful examination of the pleadings of Suit 633, which is also currently being heard before me, I find merit in the defendant's submission. The plaintiffs' SOC in the present action bears considerable resemblance, both in substance and in relief sought, to the pleadings filed in Suit 633. In particular, both suits contain allegations that question the conduct of the defendant *vis-à-vis* the principles of Shariah compliance and seek a reference to the Shariah Advisory Council under s. 56 of the Central Bank of Malaysia Act 2009. Although the wording of the reliefs in the two suits is not identical, the essential nature and objective of the reliefs are substantially the same.

[50] It is trite that the institution of parallel proceedings premised on the same or substantially similar facts, involving the same parties or parties with aligned interests, and seeking similar remedies, constitutes an abuse of the court's process. The High Court in *Ho Num Chon & Anor v. Tech-Lab Manufacturing Sdn Bhd* [2017] 5 CLJ 187 held that initiating a winding-up petition while having already commenced an originating summons for minority oppression, both based on substantially the same facts and seeking similar reliefs, amounted to a *prima facie* multiplicity of proceedings.

[51] Similarly, in *Nazaruddin Mohd Shariff & Anor v. Roslan Maulud & Anor* (*supra*), the court was unequivocal in holding that the duplication of issues and reliefs across two suits involving the same subject matter would constitute an impermissible attempt to litigate the same dispute more than once.

[52] In applying these authorities to the facts before me, I find that the plaintiffs' pursuit of the present suit, in parallel with Suit 633, falls afoul of the prohibition against duplicative litigation. This court must guard against the risk of inconsistent findings, unnecessary expenditure of judicial time, and the possibility of a party securing multiple bites at the proverbial cherry.

[53] Learned counsel for the defendant also contends that the present suit is barred by the doctrine of issue estoppel. This is on the basis that the plaintiffs, together with Deepak Jaikishan, had previously commenced legal proceedings namely Suit 225 and Suit 793; wherein they had similarly sought to impugn the validity and enforceability of various settlement agreements concluded with Bank Rakyat, including the second settlement agreement.

[54] Upon review of the pleadings and decisions in those earlier proceedings, it is clear that the plaintiffs' principal contention in the Suit 225 and Suit 793 was that the very same settlement agreements now once again under challenge were invalid, unenforceable, and inconsistent with their legal rights. Azimah Omar J (as Her Ladyship then was), the learned judge in Suit 793, distilled the core relief sought as a wholesale invalidation of the settlement agreements. Notably, at para. [54] of her judgment, Her Ladyship observed:

> [54] This Court must not lose sight of the simple core relief that the Plaintiffs are seeking in the present case. Amidst the cry for damages, the Plaintiffs are seeking that the Court finds that all of the prior Settlement Agreements are invalid and unenforceable. *To wit*, these are the same Settlement Agreements and relief that the Bank relied upon during the life of all the prior Litigations. Thus, the Plaintiffs should have raised their challenge against the validity of the Facility Agreement and the Settlement Agreements there and then and not wait for years before initiating their own action to raise what it could have raised (but have not) in the prior suits.

[55] In light of these findings, I am compelled to agree with the defendant that the doctrine of issue estoppel squarely applies to bar the present claim. The principle, as enunciated by the Supreme Court in *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* (*supra*), is that a party is estopped not only from relitigating issues which were actually decided in a prior action, but also from raising any issue which could and should have been litigated in the earlier action, but was not – whether due to oversight, tactical reserve, or strategic omission.

[56] The rationale is firmly grounded in the need to ensure finality of litigation and to guard against the piecemeal presentation of claims across multiple proceedings involving the same subject matter and parties. As Azimah Omar J (as Her Ladyship then was) rightly held at para. [58] of Suit 793 judgment:

> … Litigants cannot be allowed to reveal their causes of action on a staggered basis, intending to inundate the Court and the opposing party in an unending saga of litigation. There must be finality in litigation, and to decide against such finality would only open the Courts to a chasm of unending litigations.

[57] In the present suit, the plaintiffs are once again attempting to challenge the validity of the same settlement agreements and transactional conduct on substantially similar grounds. This assertion, though newly framed in religious and statutory language *via* a request for reference under s. 56 of the Central Bank of Malaysia Act 2009, does not escape the boundaries of issue estoppel. It is plainly an attempt to relitigate matters that either were or ought to have been raised in Suit 793 case and the related proceedings.

[58] Accordingly, I find that the plaintiffs are estopped from seeking the reliefs now prayed for in this action. The doctrine of issue estoppel bars this court from entertaining claims which should have been finally adjudicated in prior litigation. To permit otherwise would render the doctrine of *res judicata* a nullity and expose the judicial system to repetitive and vexatious litigation.

Decision

[59] Upon a careful examination of the affidavit evidence and the surrounding circumstances, I am satisfied that the defendant has met the requisite threshold for an application under O. 18 r. 19, in line with the established principles set out in *Bandar Builders Sdn Bhd v. United Malayan Banking Corporation Bhd* (*supra*). Accordingly, the plaintiff's writ and statement of claim against the defendant are hereby struck out, with costs awarded in the sum of RM10,000.